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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW TYE, HARRY
SCHMOLL, MICHAEL WILCOX,
CRAIG LAMSTER and TANYA
THOMPSON MULLINS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

WAL-MART STORES, INC., and
WAL-MART STORES EAST, L.P.

Defendants.

8:15-cv-1615 (DOC-JCG)

**FIRST AMENDED
CLASS ACTION COMPLAINT**

INTRODUCTION

1. This is a proposed class action, brought on behalf of all those who
purchased Walmart's store-brand "**Great Value Pork & Beans in Tomato**

1 **Sauce,”** in a Walmart store located in the United States, between October 7, 2009
2 and the present (“the Nationwide Class”).
3

4 2. This action is also brought on behalf of five proposed sub-classes,
5 the California Sub-Class, the New Jersey Sub-Class, the Pennsylvania Sub-
6 Class, the New York Sub-Class and the Illinois Sub-Class (collectively “the
7 State Sub-Classes”), composed of all those who purchased the Product at a
8 Walmart store located in California, New Jersey, Pennsylvania, New York and
9 Illinois, respectively, between October 7, 2009 and the present.
10
11

12 3. **“Great Value Pork & Beans in Tomato Sauce”** (“the Product”) is
13 a Walmart store -brand food product which is distributed by Defendants and is
14 sold exclusively by Defendants at Walmart stores, including Walmart stores
15 located in every state in the United States.
16
17

18 4. Despite the inclusion of the words **“Pork & Beans”** in the name of
19 the Product itself, and despite the fact that the **“INGREDIENTS”** section on the
20 label on each and every container of the product lists **“Pork”** as an ingredient of
21 the product, rigorous scientific testing has revealed that the Product actually
22 contains no pork whatsoever.
23
24

25 5. Thus, each and every can of the Product bears a uniformly-worded
26 label which makes the same false, affirmative statements of fact regarding
27 whether pork is included in the Product.
28

1 6. Upon information and belief, Defendants have been fully aware that
2 the Product actually contains no pork since its inception.
3

4 7. This complaint seeks injunctive, declaratory and monetary relief for
5 Plaintiffs, the proposed Nationwide Class, and the proposed State Sub-Classes, as
6 outlined in greater detail herein.
7

8 **JURISDICTION AND VENUE**

9
10 8. There is federal subject matter jurisdiction over this matter under the
11 Class Action Fairness Act in that it is a proposed class action, there are more than
12 100 members of the Nationwide Class and each State Sub-Class, at least some
13 class members and some defendants are citizens of different states, and the
14 amount in controversy is more than \$5 million.
15

16 **THE PARTIES**

17
18 9. Plaintiff Matthew Tye resides in Brea, California.
19

20 10. Like all members of the proposed class, Plaintiff Tye purchased the
21 Product in a Walmart store located in the United States between October 7, 2009
22 and the present. Like all members of the proposed California Sub-class, Plaintiff
23 Tye purchased the Product at a Walmart store located in California between
24 October 7, 2009 and the present.
25
26
27
28

1 11. Specifically, Plaintiff Tye purchased the Product at Walmart Store
2 #5641 located in La Habra, California, on various dates between October 7, 2009
3 and the present, including on October 2, 2015, when Plaintiff Tye purchased a
4 can of the Product at this location. See Attachment A, Receipt dated October 2,
5 2015.
6

7
8 12. Plaintiff Schmoll resides in Cherry Hill, New Jersey.
9

10 13. Like all members of the proposed class, Plaintiff Schmoll purchased
11 the Product in a Walmart store located in the United States between October 7,
12 2009 and the present. Like all members of the proposed New Jersey sub-class,
13 Plaintiff purchased the Product at a Walmart store located in New Jersey between
14 October 7, 2009 and the present.
15

16 14. Specifically, Plaintiff Schmoll purchased the Product at Walmart
17 Store #5340 located in Cherry Hill, New Jersey, on various dates between
18 October 7, 2009 and the present, including on August 30, 2015, when Plaintiff
19 Schmoll purchased three cans of the product at this location. See Attachment B,
20 Receipt dated August 30, 2015.
21

22 15. Plaintiff Michael Wilcox resides in Philadelphia, Pennsylvania.
23

24 16. Like all members of the proposed class, Plaintiff Wilcox purchased
25 the Product in a Walmart store located in the United States between October 7,
26 2009 and the present. Like all members of the proposed Pennsylvania Sub-class,
27
28

1 Plaintiff Wilcox purchased the Product at a Walmart store located in
2 Pennsylvania between October 7, 2009 and the present.
3

4 17. Specifically, Plaintiff Wilcox purchased the Product at Walmart
5 Store #2141 located in Philadelphia, Pennsylvania, on various dates between
6 October 7, 2009 and the present, including on October 6, 2015, when Plaintiff
7 Wilcox purchased a can of the Product at this location. See Attachment C,
8 Receipt dated October 6, 2015.
9
10

11 18. Plaintiff Craig Lamster resides in New York City, New York.
12

13 19. Like all members of the proposed class, Plaintiff Lamster purchased
14 the Product in a Walmart store located in the United States between October 7,
15 2009 and the present. Like all members of the proposed New York Sub-Class,
16 Plaintiff Lamster purchased the Product at a Walmart store located in New York
17 between October 7, 2009 and the present.
18

19 20. Specifically, Plaintiff Lamster purchased three cans of the Product
20 on October 10, 2015 at Walmart Store # 2905, located in Suffern, New York. See
21 Attachment D, Receipt dated October 10, 2015.
22

23 21. Plaintiff Tanya Thompson Mullins resides in Schaumburg, Illinois.
24

25 22. Like all members of the proposed class, Plaintiff Mullins purchased
26 the Product in a Walmart store located in the United States between October 7,
27 2009 and the present. Like all members of the proposed Illinois Sub-Class,
28

1 Plaintiff Mullins purchased the Product at a Walmart store located in Illinois
2 between October 7, 2009 and the present.
3

4 23. Plaintiff Mullins typically purchased at least four cans of the Product
5 per month at the Walmart Store located at 801 Meacham Road, Elk Grove
6 Village, Illinois, with her most recent such purchase occurring in September of
7 2015.
8

9 24. Defendant Wal-Mart Stores, Inc. is a corporation which is
10 headquartered at 702 SW 8th Street, Bentonville, Arkansas 72716. The
11 uniformly-worded label on the product admits, inter alia, that the product was
12 “**DISTRIBUTED BY: Wal-Mart Stores, Inc.**” Upon information and belief,
13 Defendant Wal-Mart Stores, Inc. is the owner and operator of various Walmart
14 stores throughout the United States, including California.
15
16
17

18 25. Defendant Wal-Mart Stores East, L.P. maintains its principal offices
19 at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Stores East, L.P.
20 purports to own and operate all Walmart stores in various states, including New
21 Jersey and Pennsylvania.
22

23 26. Together, Defendants Wal-Mart Stores, Inc. and Wal-Mart Stores
24 East, L.P. (collectively “Walmart”) jointly distributed, advertised, labeled, sold
25 and/or manufactured the product in, inter alia, California, New Jersey,
26 Pennsylvania, New York and Illinois, with each defendant jointly determining
27
28

1 that each such container of the product would bear the name **“Great Value Pork**
2 **& Beans in Tomato Sauce”** and would list **“PORK”** under the portion of the
3 product label marked **“INGREDIENTS.”**
4

5 **CLASS ACTION ALLEGATIONS**
6

7 27. Plaintiffs bring this action as a class action pursuant to Fed.R.Civ.P.
8 23, on behalf of a Nationwide Class defined as:

9 **All persons who, between October 7, 2009 and the present,**
10 **purchased one or more containers of “Great Value Pork &**
11 **Beans in Tomato Sauce” at a Walmart store located in the**
12 **United States.**

13 28. Plaintiff Tye also brings this action as a class action pursuant to Fed.
14 R. Civ. P. 23, on behalf of a California Sub-Class defined as:

15 **All persons who, between October 7, 2009 and the present,**
16 **purchased one or more containers of “Great Value Pork &**
17 **Beans in Tomato Sauce” at a Walmart store located in**
18 **California.**

19 29. Plaintiff Schmoll also brings this action as a class action pursuant to
20 Fed.R.Civ.P. 23, on behalf of a New Jersey Sub-Class defined as:

21 **All persons who, between October 7, 2009 and the present,**
22 **purchased one or more containers of “Great Value Pork &**
23 **Beans in Tomato Sauce” at a Walmart store located in New**
24 **Jersey.**

25 30. Plaintiff Wilcox also brings this action as a class action pursuant to
26 Fed.R.Civ.P. 23, on behalf of a Pennsylvania Sub-Class defined as:
27
28

1 **All persons who, between October 7, 2009 and the present,**
2 **purchased one or more containers of “Great Value Pork &**
3 **Beans in Tomato Sauce” at a Walmart store located in**
4 **Pennsylvania.**

5 31. Plaintiff Lamster also brings this action as a class action pursuant to
6 Fed.R.Civ.P. 23, on behalf of a New York Sub-Class defined as:

7
8 **All persons who, between October 7, 2009 and the present,**
9 **purchased one or more containers of “Great Value Pork &**
10 **Beans in Tomato Sauce” at a Walmart store located in New**
11 **York.**

12 32. Plaintiff Mullins also brings this action as a class action pursuant to
13 Fed.R.Civ.P. 23, on behalf of an Illinois Sub-Class defined as:

14
15 **All persons who, between October 7, 2009 and the present,**
16 **purchased one or more containers of “Great Value Pork &**
17 **Beans in Tomato Sauce” at a Walmart store located in Illinois.**

18 33. The members of the class and sub-classes for whose benefit this
19 action is brought are so numerous that joinder of all members is impracticable.

20
21 34. Upon information and belief, the proposed Nationwide Class is
22 composed of over 100,000 persons and each proposed State Sub-Class is
23 composed of at least 5,000 persons.

24
25 35. No violations alleged in this complaint are a result of any oral
26 communications or individualized interaction of any kind between class members
27 and Defendants.
28

1 36. Rather, all claims in this matter arise from the identical, false, written
2 affirmative statements on the Product label as outlined in detail herein.
3

4 37. There are common questions of law and fact affecting the rights of
5 all Nationwide Class members, including, inter alia, the following:
6

- 7 **a. Whether there is pork in the Product;**
8
9 **b. Whether Defendants’ act in naming the Product “Great**
10 **Value Pork & Beans in Tomato Sauce” was a false,**
11 **affirmative statement of fact;**
12 **c. Whether Defendants’ act in placing a uniform written**
13 **statement on the label of the Product, listing “PORK”**
14 **under the word “INGREDIENTS” was a false,**
15 **affirmative statement of fact;**
16 **d. Whether each Defendant was aware that the Product**
17 **contained no pork whatsoever; and**
18
19 **e. The date each Defendant became aware that the Product**
20 **contained no pork whatsoever.**

21 38. In addition, there are common questions of law and fact affecting the
22 rights of all California Sub-Class members, including, inter alia, the following:
23

- 24 **a. Whether Defendants’ actions, as outlined herein, violated**
25 **the California Business & Professions Code § 17200 et**
26 **seq.;**
27 **b. Whether Defendants’ actions, as outlined herein, violated**
28 **the California Business & Professions Code § 17500 et**
seq.;

- c. **Whether Defendants’ action in placing the word “PORK” under the word “INGREDIENTS” on the Product label constituted an express warranty under California law; and**
- d. **Whether, by the facts alleged herein, Defendants have breached an express warranty under California common law.**

39. In addition, there are common questions of law and fact affecting the rights of all New Jersey Sub-Class members, including, inter alia, the following:

- a. **Whether Defendants’ action, in naming the Product “Great Value Pork & Beans in Tomato Sauce,” was a misleading sales practice in the sale of goods in violation of N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act;**
- b. **Whether Defendants’ action, in placing a uniform written statement listing “PORK” under the word “INGREDIENTS” on the Product label, was a false, affirmative statement of fact in the sale of goods in violation of N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act;**
- c. **Whether Defendants’ action in placing the word “PORK” under the word “INGREDIENTS” on the Product label constituted an express warranty under New Jersey law;**
- d. **Whether, by the facts alleged herein, Defendants have breached an express warranty under New Jersey law;**
- e. **Whether the Product label was a consumer notice or warranty within the meaning of the New Jersey Truth in Consumer Contract, Warranty and Notice Act;**

- f. Whether Defendants’ actions, as described herein, violated the New Jersey Truth in Consumer Contract, Warranty and Notice Act;**
- g. Whether an implied contract relating to the sale of the Product existed under New Jersey common law between Defendants and each member of the New Jersey Sub-Class; and**
- h. Whether, by placing false statements of fact on the Product label, as described herein, Defendants breached the implied duty of good faith and fair dealing which was part of the implied contract of sale between Defendants and each member of the New Jersey Sub-Class.**

40. In addition, there are common questions of law and fact affecting the rights of all Pennsylvania Sub-Class members, including, inter alia, the following:

- a. Whether Defendants’ action, in naming the Product “Great Value Pork & Beans in Tomato Sauce,” was “deceptive conduct which creates a likelihood of confusion or misunderstanding” within the meaning of the Pennsylvania Uniform Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);**
- b. Whether Defendants’ action, in placing a uniform written statement listing “PORK” under the word “INGREDIENTS” on the Product label, was “deceptive conduct which creates a likelihood of confusion or misunderstanding” within the meaning of the Pennsylvania Uniform Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);**
- c. Whether Defendants’ action in placing the word “PORK” under the word “INGREDIENTS” on the Product label constituted an express or implied warranty under Pennsylvania law;**

- d. Whether, by the facts alleged herein, Defendants have breached an express or implied warranty under Pennsylvania law;**
- e. Whether an implied contract relating to the sale of the Product existed under Pennsylvania common law between Defendants and each member of the Pennsylvania Sub-Class; and**
- f. Whether, by placing false statements of fact on the Product label, as described herein, Defendants breached the implied duty of good faith and fair dealing which was part of the implied contract of sale between Defendants and each member of the Pennsylvania Sub-Class.**

41. In addition, there are common questions of law and fact affecting the rights of all New York Sub-Class members, including, inter alia, the following:

- a. Whether Defendants' action, in naming the Product "Great Value Pork & Beans in Tomato Sauce," was in a misleading, inaccurate, and deceptive manner in violation of the New York General Business Law § 349;**
- b. Whether Defendants' action, in placing a uniform written statement listing "PORK" under the word "INGREDIENTS" on the Product label was in a misleading, inaccurate, and deceptive manner in violation of the New York General Business Law § 350;**
- c. Whether Defendants' action in placing the word "PORK" under the word "INGREDIENTS" on the Product label constituted an express warranty under New York law; and**
- d. Whether, by the facts alleged herein, Defendants have breached an express warranty under New York law.**

1 42. In addition, there are common questions of law and fact affecting the
2 rights of all Illinois Sub-Class members, including, inter alia, the following:
3

- 4 **a. Whether Defendants' actions, as outlined herein, violated the**
5 **Illinois Consumer Fraud and Deceptive Business Practices Act,**
6 **815 ILCS 505/1, et seq.;**
7
8 **b. Whether, by the facts alleged herein, Defendants have breached**
9 **an express or implied warranty under Illinois common law;**
10
11 **c. Whether an implied contract for the purchase of goods existed**
12 **between Defendants and each member of the Illinois Sub-Class**
13 **under Illinois common law; and**
14
15 **d. Whether Defendants' actions, as outlined herein, breached that**
16 **implied contract and/or the implied covenant of good faith and**
17 **fair dealing that was part of each such contract under Illinois**
18 **common law.**

19 43. Plaintiffs are each members of the Nationwide Class and respective
20 State Sub-Class they seek to represent.

21 44. The claims of Plaintiffs are not only typical of all Nationwide Class
22 and State Sub-Class members, they are identical.

23
24 45. All claims of Plaintiffs and the Nationwide Class and State Sub-
25 Classes arise from the identical false, written statement of affirmative fact on the
26 Product label as described herein.
27
28

1 46. All claims of Plaintiffs and the Nationwide Class and State Sub-
2 Classes are based on the same legal theories.
3

4 47. Plaintiffs have no interest antagonistic to, or in conflict with, the
5 Nationwide Class and State Sub-Classes.
6

7 48. Plaintiffs will thoroughly and adequately protect the interests of the
8 Nationwide Class and State Sub-Classes, having retained qualified and
9 competent legal counsel to represent themselves and the Nationwide Class and
10 State Sub-Classes.
11

12 49. Defendants have acted and refused to act on grounds generally
13 applicable to the Nationwide Class and State Sub-Classes, thereby making
14 appropriate injunctive and declaratory relief for the class as a whole.
15
16

17 50. The prosecution of separate actions by individual class members
18 would create a risk of inconsistent or varying adjudications.
19
20

21 51. A class action is the only practical, available method for the fair and
22 efficient adjudication of the controversy since, inter alia, the damages suffered
23 by each class member were less than \$2 per container of the Product purchased
24 and, as such, individual actions are not economically feasible.
25
26
27
28

1 52. Common questions will predominate, and there will be no unusual
2 manageability issues.
3

4 **FACTUAL ALLEGATIONS**
5

6 53. Defendants are in the business of distributing, marketing, selling,
7 and/or manufacturing inter alia, **“Great Value Pork & Beans in Tomato**
8 **Sauce.”**
9

10 54. **“Great Value Pork & Beans in Tomato Sauce”** is an exclusive
11 Walmart “store brand” food product, sold at Walmart stores throughout the
12 United States, including 200 Walmart stores in California, 60 Walmart stores in
13 New Jersey, 136 Walmart stores in Pennsylvania, 84 Walmart stores in New
14 York, and 156 Walmart stores in Illinois.
15
16
17

18 *///*

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20 *///*

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22 *///*

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24 *///*

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26 *///*
27
28

55. Since the initial offering of the Product, each and every label on this Product has borne a uniformly-worded label which identifies the name of the Product in large letters as “**Great Value Pork & Beans in Tomato Sauce,**” as depicted in Figure 1, below.

Figure 1



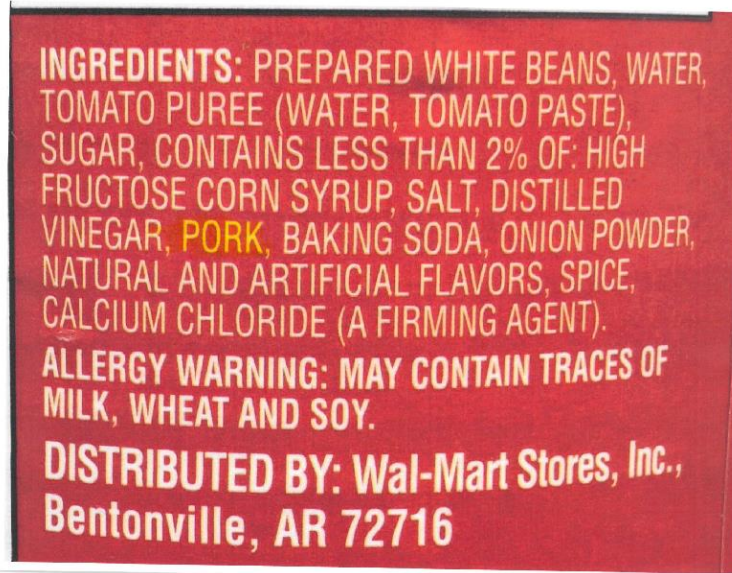
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56. Since the initial offering of the Product, each and every label on this Product has borne a uniformly-worded label which includes, inter alia, the word “**PORK**” under the word “**INGREDIENTS,**” as depicted in Figure 2, below.

Figure 2



57. In actuality, rigorous scientific testing, including microscopic and chemical analysis, has revealed that the Product contains no pork whatsoever.

58. The testing upon which Plaintiffs rely was conducted in accordance with FDA Protocols and the Official Methods of the Association of Official Analytical Chemists International (AOAC), including the 12-sample method set forth in 21 C.F.R. § 101.9(g)(2). Plaintiffs do not believe that such testing was necessary or required in this case, but they have nevertheless complied with these protocols out of an abundance of caution.

1 59. Defendants, as distributors, developers, exclusive sellers and/or
2 manufacturers of **“Great Value Pork & Beans in Tomato Sauce,”** have been
3 aware since the Product’s inception that the Product contains no pork
4 whatsoever.
5

6
7 60. It is equally clear that Defendants have been fully aware for some
8 time that in order to label a product as “Pork & Beans,” the product must contain
9 at least some pork. See U.S. Food and Drug Administration CPG Sec. 567.200,
10 entitled **“Pork and Beans and Similar Bean Products,”** which makes clear that
11 the product must be made **“with pork.”**
12

13
14 61. Indeed, over fifteen years ago, the United States Department of
15 Agriculture promulgated a written **“Commercial Item Description”** which
16 specifies that any product described as **““Pork and Beans in Tomato Sauce’ ...**
17 **shall contain a minimum of 12 percent ham, bacon or pork based on the**
18 **weight of the smoked or fresh meat at the time of formulation.”**
19
20
21

22 62. Despite this, Defendants opted to name the Product **“Great Value**
23 **Pork & Beans in Tomato Sauce,”** knowing that it contains no pork whatsoever.
24

25 63. Defendants also chose to list the word **“PORK”** on the Product
26 label, under the word **“INGREDIENTS,”** knowing that the Product actually
27 contained no pork whatsoever.
28

1 64. Despite all of the foregoing, Defendants continue to sell the Product,
2 with the same written, false, uniformly-worded statements on the Product label
3 outlined herein, in Walmart stores throughout the United States, including
4 California, New Jersey, Pennsylvania, New York and Illinois.
5

6
7 **COUNT I**

8 **BREACH OF WARRANTY**

9
10 **On Behalf of the Nationwide Class**

11 65. Defendants sold the Product in their regular course of business.
12

13 66. Plaintiffs and the members of the Nationwide Class purchased the
14 Product.
15

16 67. The written, uniformly-worded label on the Product (as depicted
17 herein) constituted an express warranty provided to all purchasers of the Product
18 under the law of each state in the United States in which the Product was sold.
19
20

21 68. Defendants' written affirmations of fact, promises, and/or
22 descriptions on the Product label were part of that express warranty under the
23 laws of each state in the United States in which the Product was sold.
24
25

26 69. By the acts alleged herein, Defendants breached that warranty
27 because the Product cannot and does not conform to the properties Defendants
28 represented on the label.

1 70. The false information provided on the label was undiscoverable to
2 Plaintiffs and the members of the Nationwide Class at the time of purchase of the
3 Product.
4

5 71. All conditions precedent to seeking liability under this claim for
6 breach of warranty have been performed by or on behalf of Plaintiffs and the
7 members of the Nationwide Class in terms of paying for the goods at issue.
8
9

10 72. Defendants had actual and/or constructive notice of the false labeling
11 information and to date have taken no action to remedy their breaches of
12 warranty.
13
14

15 73. Defendants were on notice of their breaches of warranty and have
16 refused to remedy such breaches.
17

18 74. By placing the Product into the stream of commerce, by operation of
19 law in each state in the United States, Defendants also impliedly warranted to
20 Plaintiffs and the members of the Nationwide Class that the Product was
21 accurately labeled in conformance with the law.
22
23

24 75. Defendants' breaches of warranty have caused Plaintiffs and the
25 members of the Nationwide Class to suffer injuries by paying for falsely labeled
26 products. As a direct and proximate result of Defendants' breaches of warranty,
27 Plaintiffs and the members of the Nationwide Class have suffered damages and
28

1 continue to suffer damages, including economic damages in terms of the
2 difference between the value of the Product as promised and the value of the
3 Product as delivered.
4

5
6 76. As a result of the breach of these warranties, Plaintiffs and the
7 members of the Nationwide Class are entitled to legal and equitable relief
8 including damages, costs, attorneys' fees, rescission, and/or other relief as
9 deemed appropriate, for an amount to compensate them for not receiving the
10 benefit of their bargain.
11
12

13 **COUNT II**

14 **UNJUST ENRICHMENT**

15 **On Behalf of the Nationwide Class**

16
17 77. Plaintiffs incorporate all preceding paragraphs of this complaint as if
18 set forth fully herein.
19
20

21 78. Plaintiffs and the members of the Nationwide Class have conferred
22 substantial benefits on Defendants by purchasing the Product, and Defendants
23 have knowingly and willingly accepted and enjoyed these benefits.
24

25 79. Defendants either knew or should have known that the payments
26 rendered by Plaintiffs and the members of the Nationwide Class were given and
27
28

1 received with the expectation that the Product would be as represented and
2 warranted.
3

4 80. Under the common law of unjust enrichment in every state in the United
5 States where the Product was sold, it would be inequitable for Defendants to
6 retain the benefit of the payments under these circumstances and such retention
7 constitutes unjust enrichment.
8
9

10 81. Under the law of every state in the United States where the Product
11 was sold, both law and equity demand disgorgement of Defendants' ill-gotten
12 gains.
13
14

15 82. As a direct and proximate result of Defendants' wrongful conduct
16 and unjust enrichment, Plaintiffs and the members of the Nationwide Class are
17 entitled to restitution from Defendants and institution of a constructive trust
18 disgorging all profits, benefits, and other compensation obtained by Defendants.
19
20

21 **COUNT III**

22 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
23 **Unlawful Business Acts and Practices**
24

25 **On Behalf of the California Sub-Class Only**

26 83. Plaintiff Tye incorporates all preceding paragraphs of this complaint
27 as if set forth fully herein.
28

1 84. Defendants' conduct as set forth herein constitutes unlawful business
2 acts and practices within the meaning of the California Business & Professions
3 Code §17200, et seq.

4
5
6 85. Defendants sold the Product in California during the relevant class
7 period applicable to Plaintiff Tye and the members of the California Sub-Class.

8
9 86. Defendants are each a "person" within the meaning of the Sherman
10 Food Drug & Cosmetic Law, California Health & Safety Code section 109875,
11 et seq. (the "Sherman Law").

12
13
14 87. Defendants' business practices, as described herein, are unlawful
15 under section 17200, et seq. by virtue of Defendants' violations of the
16 advertising provisions of Article 3 of the Sherman Law and the misbranded food
17 provisions of Article 6 of the Sherman Law.

18
19
20 88. Defendants' business practices are unlawful under section 17200, et
21 seq. by virtue of Defendants' violations of section 17500, et seq., which forbids
22 untrue and misleading advertising.

23
24 89. Defendants' business practices are unlawful under section 17200 et
25 seq. by virtue of Defendants' violations of the Consumers Legal Remedies Act,
26 California Civil Code section 1750, et seq.
27
28

1 90. Defendants sold Plaintiff Tye and the members of the California
2 Sub-Class the Product, which was not capable of being sold or held legally in
3 California, and which was legally worthless or worth less than advertised, and
4 Plaintiff Tye and the members of the California Sub-Class paid a premium price
5 for the Product.
6
7

8 91. As a result of Defendants' illegal business practices, Plaintiff Tye
9 and the members of the California Sub-Class, pursuant to California Business
10 and Professions Code section 17203, are entitled to an order enjoining such
11 future conduct and such other orders and judgments which may be necessary to
12 disgorge Defendants' ill-gotten gains and to restore to Plaintiff Tye and members
13 of the California Sub-Class any money paid for the Product.
14
15
16

17 92. Defendants' unlawful business acts present a threat and a reasonable
18 continued likelihood of injury to Plaintiff Tye and members of the California
19 Sub-Class.
20
21

22 93. As a result of Defendants' conduct, Plaintiff Tye and members of the
23 California Sub-Class, pursuant to California Business and Professions Code
24 section 17203, are entitled to an order enjoining such future conduct by
25 Defendants, and such other orders and judgments which may be necessary to
26
27
28

1 disgorge Defendants' ill-gotten gains and restore to Plaintiff Tye and members of
2 the California Sub-Class any monies paid for the Product.
3

4 **COUNT IV**

5 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
6 **Unfair Business Acts and Practices**
7

8 **On Behalf of the California Sub-Class Only**

9 94. Plaintiff Tye incorporates all preceding paragraphs of this complaint
10 as if set forth fully herein.
11

12 95. Defendants' conduct as set forth herein constitutes unfair business
13 acts and practices within the meaning of the California Business and Professions
14 Code § 17200, et seq.
15
16

17 96. Defendants sold the Product in California during the relevant class
18 period applicable to Plaintiff Tye and the members of the California Sub-Class.
19

20 97. Plaintiff Tye and the members of the California Sub-Class suffered a
21 substantial injury by virtue of buying the Product which they would not have
22 suffered absent Defendants' illegal conduct.
23
24

25 98. Defendants' deceptive marketing, advertising, packaging and
26 labeling of the Product
27
28

1 and their sale of unsalable misbranded products that were illegal to possess was of
2 no benefit to consumers, and the harm to consumers and competition is
3 substantial.
4

5 99. Defendants sold the product to Plaintiff Tye and the California Sub-
6 Class, which was not capable of being legally sold in California and which was
7 legally worthless.
8

9
10 100. Plaintiff and the members of the California Sub-Class had no way of
11 reasonably knowing that the Product was misbranded and was not properly
12 marketed, advertised, packaged and labeled, and thus they could not have
13 reasonably avoided the injury each of them suffered.
14

15
16 101. The consequences of Defendants' conduct as set forth herein
17 outweigh any justification, motive or reason therefor. Defendants' conduct is
18 and continues to be immoral, unethical, unscrupulous, contrary to public policy,
19 and is substantially injurious to Plaintiff Tye and the California Sub-Class.
20
21

22 102. Pursuant to Business and Professions Code § 17203, and as a result
23 of Defendants' conduct, Plaintiff Tye and the California Sub-Class are entitled to
24 an order enjoining such future conduct by Defendants, and such other orders and
25 judgments which may be necessary to disgorge Defendants' ill-gotten gains and
26
27
28

1 restore any money paid by Plaintiff Tye and the members of California Sub-
2 Class to purchase the Product from Defendants in California.
3

4 **COUNT V**

5 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**
6 **Fraudulent Business Acts and Practices**
7

8 **On Behalf of the California Sub-Class Only**

9 103. Plaintiff Tye incorporates all preceding paragraphs of this complaint
10 as if set forth fully herein.
11

12 104. Defendants' conduct as set forth herein constitutes fraudulent
13 business practices under California Business and Professions Code section
14 17200, et seq.
15
16

17 105. Defendants' conduct in mislabeling and misbranding its food
18 products originated from and was approved at Defendants' headquarters.
19

20 106. Defendants sold the Product in California during the relevant class
21 period.
22

23 107. Defendants' misleading marketing, advertising, packaging, and
24 labeling of the Product and their misrepresentations that the Product was salable,
25 capable of legal possession and not misbranded were likely to deceive reasonable
26 consumers and, in fact, Plaintiff Tye and the members of the California Sub-
27
28

1 Class were deceived. By the acts set forth herein, Defendants have engaged in
2 fraudulent business acts and practices.
3

4 108. Defendants' fraud and deception caused Plaintiff Tye and members
5 of the California Sub-Class to purchase the Product from Defendants which they
6 would have not otherwise purchased had they known the true nature of the
7 Product.
8
9

10 109. Defendants sold Plaintiff Tye and members of the California Sub-
11 Class the Product, which was not capable of being sold or held legally and which
12 was legally worthless. Plaintiff Tye and members of the California Sub-Class
13 paid a premium price for the Product.
14
15

16 110. As a result of Defendants' conduct as set forth herein, Plaintiff Tye
17 and members of the California Sub-Class, pursuant to California Business and
18 Professions Code section 17203, are entitled to an order enjoining such future
19 conduct by Defendants, and such other orders and judgments which may be
20 necessary to disgorge Defendants' ill-gotten gains and restore any money paid
21 for the Product by Plaintiff Tye and members of the California Sub-Class.
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COUNT VI

**CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.
Misleading and Deceptive Advertising**

On Behalf of the California Sub-Class Only

111. Plaintiff Tye incorporates all preceding paragraphs of this complaint as if set forth fully herein.

112. Plaintiff Tye asserts this cause of action for violations of California Business and Professions Code § 17500, et seq. for misleading and deceptive advertising against Defendants on behalf of the California Sub-Class.

113. Defendants sold the Product to Plaintiff Tye and the members of the California Sub-Class in California.

114. Defendants sold the Product to Plaintiff Tye and the California Sub-Class, which was not capable of being legally sold in California and which was legally worthless.

115. By the acts alleged herein, Defendants engaged in a scheme of offering the Product for sale in California to Plaintiff Tye and the members of the California Sub-Class by way of, inter alia, product packaging and labeling.

116. These materials misrepresented and/or omitted the true contents and nature of Defendants' Product, as outlined in greater detail previously.

1 117. Defendants' labels for the Product were used within California and
2 come within the definition of advertising as contained in California Business and
3 Professions Code § 17500, et seq. in that such Product packaging and labeling
4 were intended as inducements to purchase the Product and are statements
5 disseminated by Defendants to Plaintiff Tye and the California Sub-Class that
6 were intended to reach members of the California Sub-Class.
7
8

9
10 118. Defendants knew, or in the exercise of reasonable care, should have
11 known, that these statements were misleading and deceptive as set forth herein.
12

13 119. In furtherance of their plan and scheme, Defendants prepared and
14 distributed within California via product packaging and labeling, statements that
15 misleadingly and deceptively represented the composition and the nature of the
16 Product.
17

18
19 120. Plaintiff Tye and the members of the California Sub-Class
20 necessarily and reasonably relied on Defendants' labels, and were the intended
21 targets of such representations.
22

23
24 121. Indeed, as the misrepresentations at issue were contained on the label
25 of the Product itself, the Court may presume that the members of the California
26 Sub-Class relied upon this false statement.
27
28

1 122. Defendants' conduct in disseminating misleading and deceptive
2 statements in California to Plaintiff Tye and the members of the California Sub-
3 Class was and is likely to deceive reasonable consumers by obfuscating the true
4 composition and nature of the Product in violation of the "misleading prong" of
5 California Business and Professions Code § 17500, et seq.
6
7

8 123. As a result of Defendants' violation of the "misleading prong" of
9 California Business and Professions Code § 17500, et seq., Defendants have been
10 unjustly enriched at the expense of Plaintiff Tye and the members of the
11 California Sub-Class.
12
13

14 124. Misbranded products cannot be legally sold or held in California and
15 are legally worthless.
16
17

18 125. Pursuant to California Business and Professions Code § 17535,
19 Plaintiff Tye and the members of the California Sub-Class are entitled to an order
20 enjoining such future conduct by Defendants, and such other orders and
21 judgments which may be necessary to disgorge Defendants' ill-gotten gains and
22 restore any money paid for Defendants' Product in California.
23
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COUNT VII

**CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.
Untrue Advertising**

On Behalf of the California Sub-Class Only

126. Plaintiff Tye incorporates all preceding paragraphs of this complaint as if set forth fully herein.

127. Plaintiff Tye asserts this cause of action against Defendants on behalf of the California Sub-Class for violations of California Business and Professions Code § 17500, et seq., regarding untrue advertising.

128. Defendants engaged in a scheme of offering the Product for sale to Plaintiff Tye and the members of the California Sub-Class in California by way of product packaging and labeling, as outlined herein.

129. These materials misrepresented and/or omitted the true contents and nature of the Product.

130. With regard to sales of the Product in California during the class period relevant to the California Sub-Class, Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in California Business and Professions Code § 17500, et seq. in that the Product's packaging and labeling were intended as inducements to

1 purchase the Product, and are statements disseminated by Defendant to Plaintiff
2 Tye and the California Sub-Class.
3

4 131. Defendants knew, or in the exercise of reasonable care, should have
5 known that these statements were untrue.
6

7 132. In furtherance of their plan and scheme, Defendants prepared and
8 distributed in California via the Product's packaging and labeling, statements that
9 falsely advertise the composition of the Product, as outlined in greater detail
10 previously, and which falsely misrepresented the nature of the Product.
11

12 133. Plaintiff Tye and the members of the California Sub-Class were the
13 intended targets of such representations and would reasonably be deceived by
14 Defendants' materials.
15

16 134. Indeed, it is impossible to envision a scenario in which someone who
17 desired to purchase pork and beans would not look at the label of the product,
18 which identified the name of the product as **"Pork & Beans."**
19

20 135. Defendants' conduct in disseminating untrue advertising throughout
21 California deceived Plaintiff Tye and members of the California Sub-Class by
22 obfuscating the true contents, nature and quality of the Product in violation of the
23 "untrue prong" of California Business and Professions Code § 17500.
24
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137. Pursuant to California Business and Professions Code § 17535, Plaintiff Tye and the members of the California Sub-Class are entitled to an order enjoining such further conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for the Product in California by Plaintiff Tye and the members of the California Sub-Class.

On Behalf of the California Sub-Class Only

139. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, California Civil Code § 1750, et seq. (the “CCLRA”) because the actions of Defendants, and their conduct described herein, constitute

1 transactions that have resulted in the sale or lease of goods or services to
2 consumers in California.
3

4 140. Plaintiff Tye and each member of the California Subclass, are
5 consumers as defined by California Civil Code § 1761(d).
6

7 141. Defendants intended to sell the Product to, inter alia, Plaintiff Tye
8 and the members of the California Sub-Class.
9

10 142. The Product is goods within the meaning of Civil Code § 1761(a).
11

12 143. Defendants violated the CCLRA in at least the following respects:
13

- 14
- 15 **a. in violation of § 1770(a)(5), in that these Defendants**
16 **represented that the Product had characteristics,**
17 **ingredients, and benefits (i.e. that it contained pork) which**
18 **the Product did not actually possess;**
 - 19 **b. in violation of § 1770(a)(7), in that these Defendants**
20 **represented that the Products was of a particular standard,**
21 **quality, or grade (i.e. that it was “Pork and Beans” and that**
22 **it contained pork), when the Product was actually only**
23 **beans and tomato sauce;**
 - 24 **c. in violation of § 1770(a)(9), in that these Defendants have**
25 **advertised the Product on its label as being “Pork and**
26 **Beans,” with intent not to sell the Product as advertised,**
27 **because the Product was actually only beans and tomato**
28 **sauce; and**

1 **d. in violation of § 1770(a)(16), in that these Defendants**
2 **represented that the Product has been supplied in**
3 **accordance with previous representations, which the**
4 **Product did not meet.**

5 144. Defendants violated the CCLRA by representing the Product as
6 “Pork and Beans” and as containing “pork,” when Defendants knew, or should
7 have known, that the representations and advertisements were false and
8 misleading.
9

10
11 145. The acts and omissions of these Defendants constitute unfair,
12 deceptive, and misleading business practices in violation of Civil Code §
13 1770(a).
14

15
16 146. On October 15, 2015, Plaintiff Tye sent notice to these Defendants in
17 writing, by certified mail, of the violations alleged herein and demanded that
18 these Defendants remedy those violations.
19

20
21 147. As of November 23, 2015, Defendants have not ceased the
22 challenged conduct or responded to Plaintiff Tye’s demand letter.
23

24 148. As a result, Plaintiffs now seek actual, punitive, and statutory
25 damages pursuant to the CCLRA for the California Subclass.
26
27
28

1 149. The conduct by these Defendants was malicious, fraudulent, and
2
3 wanton in that these Defendants intentionally and knowingly provided
4 misleading information to the public.

5
6 **COUNT IX**

7 **CALIFORNIA COMMON LAW REGARDING BREACH OF EXPRESS**
8
9 **WARRANTY**

10 **On Behalf of the California Sub-Class Only**

11 150. Plaintiff Tye incorporates all preceding paragraphs of this complaint
12
13 as if set forth fully herein.

14
15 151. By operation of California law, Defendants entered into a contract
16
17 with each member of the California Sub-Class when the member purchased a
18 container of the Product at Walmart located in California.

19 152. By operation of California law, the terms of this contract included an
20
21 express warranty incorporating the identical affirmation, promise and description
22
23 by Defendants regarding the Product, made in writing on the label, that the
24 Product contained “**PORK**” as an ingredient and that the name of the product
25 was “**Great Value Pork & Beans in Tomato Sauce.**”

26
27 153. The relevant terms and language of the express warranty between
28 Defendants and each member of the California Sub-Class are identical.

155. As a direct and proximate result of this breach of express warranty by Defendants, each member of the California Sub-Class has suffered economic loss.

156. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set forth fully herein.

158. The New Jersey Consumer Fraud Act (“CFA”) was enacted to protect consumers against sharp and unconscionable commercial practices by

1 persons engaged in the sale of goods or services. See Marascio v. Campanella,
2 298 N.J. Super. 491, 500 (App. Div. 1997).
3

4 159. The CFA is a remedial statute which the New Jersey Supreme Court
5 has repeatedly held must be construed liberally in favor of the consumer to
6 accomplish its deterrent and protective purposes. See Furst v. Einstein Moomjy,
7 182 N.J. 1, 11-12 (2004) (“**The Consumer Fraud Act is remedial legislation**
8 **that we construe liberally to accomplish its broad purpose of safeguarding**
9 **the public.**”).
10
11

12 160. With regard to the CFA, “[t]he available legislative history
13 **demonstrates that the Act was intended to be one of the strongest consumer**
14 **protection laws in the nation.”** New Mea Const. Corp. v. Harper, 203 N.J.
15 Super. 315, 319 (App. Div. 1986).
16
17
18

19 161. For this reason, the “**history of the Act is one of constant**
20 **expansion of consumer protection.”** Kavky v. Herballife International of
21 America, 359 N.J. Super. 497, 504 (App. Div. 2003).
22
23

24 162. The CFA was intended to protect consumers “**by eliminating sharp**
25 **practices and dealings in the marketing of merchandise and real estate.”**
26 Lemelledo v. Beneficial Management Corp., 150 N.J. 255, 263 (1997).
27
28

1 163. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits **“unlawful**
2 **practices,”** which are defined as:

3
4 **“The act, use or employment of any unconscionable commercial**
5 **practice, deception, fraud, false pretense, misrepresentation, or**
6 **the knowing, concealment, suppression,**
7 **or omission of any material fact with intent that others rely upon**
8 **such concealment, suppression or omission whether or not any**
9 **person has in fact been misled, deceived or damaged thereby.”**

10
11 164. The catch-all term **“unconscionable commercial practice”** was
12 added to the CFA by amendment in 1971 to ensure that the Act covered, inter
13 alia, **“incomplete disclosures.”** Skeer v. EMK Motors, Inc., 187 N.J. Super.
14 465, 472 (App. Div. 1982).

15
16
17 165. In describing what constitutes an **“unconscionable commercial**
18 **practice,”** the New Jersey Supreme Court has noted that it is an amorphous
19 concept designed to establish a broad business ethic. See Cox v. Sears Roebuck
20 & Co., 138 N.J. 2, 18 (1994).

21
22
23 166. **“Great Value Pork & Beans in Tomato Sauce”** is a “credence
24 good,” because its properties and purported benefits cannot be independently
25 assessed or verified by the consumer at the time of purchase and such properties
26 and benefits are made known to consumers only through the information
27 provided on the label by the product's manufacturer and distributor. See Lee v.
28

1 Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010). See also Richard A. Posner,
2 An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489
3 (1999) (“**A good is a credence good if the consumer cannot readily**
4 **determine its quality by inspection or even use, so that he has to take its**
5 **quality ‘on faith.’”).**

8
9 167. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C.,
10 203 N.J. 496, 522 (2010) spoke regarding the relationship between dishonest
11 product labeling and credence goods, stating:

13 **“A rational consumer does not randomly take a bottle of pills off**
14 **a shelf and then purchase it without reading the packaging and**
15 **labeling.”**

16 168. In order to state a cause of action under the CFA, a plaintiff does not
17 need to show reliance by the consumer. See Varacallo v. Massachusetts Mut.
18 Life Ins. Co., 332 N.J.Super. 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v.
19 Weichert Co. Realtors, 148 N.J. 582, 607-608, 691 A.2d 350 (1997) (holding
20 that reliance is not required in suits under the CFA because liability results from
21 **“misrepresentations whether ‘any person has in fact been misled, deceived**
22 **or damaged thereby”**).
23
24
25

26 169. Rather, the CFA requires merely a causal nexus between the false
27 statement and the purchase, not actual reliance. See Lee v. Carter-Reed Co.,
28

1 L.L.C., 203 N.J. 496, 522 (2010) (“**causation under the CFA is not the**
2 **equivalent of reliance**”).
3

4 170. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:
5
6 **“It bears repeating that the CFA does not require proof of**
7 **reliance, but only a causal connection between the unlawful**
8 **practice and ascertainable loss.”**

9 171. The purchase of a credence good, where the label on the product
10 contains false misrepresentations of material fact, by itself, establishes a
11 presumption of a causal nexus under the CFA. See Lee v. Carter-Reed Co.,
12 L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49 (“**the purchase of the**
13 **policy by a person who was shown the literature would be sufficient to**
14 **establish prima facie proof of causation.**”).
15
16

17
18 172. By the acts alleged herein, Defendants have violated the CFA.
19

20 173. Specifically, Defendants have made identical, false, written,
21 misstatements of affirmative fact on the label of each container of the Product
22 sold in New Jersey, as outlined previously.
23

24 174. These statements were false when made and Defendants knew that
25 these statements were false when made.
26
27
28

1 175. As a result of these false, written affirmative misstatements of
2 material fact, Plaintiff Schmoll and the New Jersey Sub-Class have suffered an
3 ascertainable loss of money.
4

5
6 176. Specifically, Plaintiff Schmoll and the members of the New Jersey
7 Sub-Class have been deprived of the benefit of the promised bargain – a valid
8 measure of “ascertainable loss” under the CFA according to the New Jersey
9 Supreme Court and New Jersey Appellate Division – in that Plaintiff Schmoll
10 and the members of the New Jersey Sub-Class received something less than what
11 was represented by Defendants on the Product’s label.
12
13

14
15 **COUNT XI**

16 **NEW JERSEY BREACH OF EXPRESS WARRANTY**

17
18 **On Behalf of the New Jersey Sub-Class Only**

19 177. Plaintiff Schmoll incorporates all preceding paragraphs of this
20 complaint as if set forth fully herein.
21

22 178. By operation of New Jersey law, Defendants entered into a contract
23 with each New Jersey Sub-Class member, including Plaintiff Schmoll, when the
24 member purchased a container of **“Great Value Pork & Beans in Tomato**
25 **Sauce”** in New Jersey.
26
27
28

1 179. By operation of New Jersey law, the terms of this contract included
2 an express warranty incorporating the identical affirmation, promise and
3 description by Defendants regarding “**Great Value Pork & Beans in Tomato**
4 **Sauce,**” made in writing on the Product label, which stated that the good
5 contained “**PORK.**”
6
7

8 180. The relevant terms and language of the express warranty between
9 Defendants and each member of the New Jersey Sub-Class are identical.
10
11

12 181. Defendants have breached the terms of this express warranty in an
13 identical manner for each New Jersey Sub-class member because “**Great Value**
14 **Pork & Beans in Tomato Sauce**” did not and could not conform to the
15 affirmation, promise and description on this label because, in fact, the Product
16 actually contained no pork whatsoever.
17
18

19 182. As a direct and proximate result of this breach of express warranty
20 by Defendants, each member of the New Jersey Sub-Class has suffered
21 economic loss.
22
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COUNT XII

**NEW JERSEY BREACH OF IMPLIED CONTRACT/VIOLATION
OF COVENANT OF GOOD FAITH AND FAIR DEALING**

On Behalf of the New Jersey Sub-Class Only

183. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set forth fully herein.

184. By operation of New Jersey law, there existed an implied contract for the sale of goods between Plaintiff Schmoll and each member of the New Jersey Sub-Class who purchased the Product at a Walmart store located in New Jersey.

185. By operation of New Jersey law, there existed an implied duty of good faith and fair dealing in each such contract.

186. By the acts alleged herein, Defendants have violated that duty of good faith and fair dealing, thereby breaching the implied contract between Defendants and each member of the New Jersey Sub-Class.

187. As a result of that breach, Plaintiff Schmoll and each member of the New Jersey Sub-Class suffered damages.

COUNT XIII

**NEW JERSEY TRUTH IN CONSUMER CONTRACT, WARRANTY
AND NOTICE ACT N.J.S.A. 56:12-14 et seq.**

On Behalf of the New Jersey Sub-Class Only

188. Plaintiff Schmoll incorporates all preceding paragraphs of this complaint as if set forth fully herein.

189. Plaintiff Schmoll and the members of the New Jersey Sub-Class are “consumers” within the meaning of N.J.S.A. 56:12-15 and 16.

190. Defendants are “sellers” within the meaning of N.J.S.A. 56:12-15 and 16.

191. The Product label on “**Great Value Pork & Beans in Tomato Sauce**” is both a consumer “notice” and “warranty” within the meaning of N.J.S.A. 56:12-15 and 16.

192. By the acts alleged herein, Defendants have violated N.J.S.A. 56:12-16 because, in the course of Defendants’ business, Defendants have offered written consumer notices and warranties to Plaintiff Schmoll and the New Jersey Sub-Class which contained provisions which violated their clearly established legal rights under New Jersey state law, within the meaning of N.J.S.A. 56:12-15.

1 193. Pursuant to N.J.S.A. 56:12-17, this class complaint seeks a statutory
2 penalty of \$100 for each member of the New Jersey Sub-Class, as well as actual
3 damages and attorney's fees and costs.
4

5
6 **COUNT XIV**

7 **PENNSYLVANIA UNIFORM TRADE PRACTICES AND**
8 **CONSUMER PROTECTION LAW 73 Pa. Cons.St. § 201–1 et seq**

9 **On Behalf of the Pennsylvania Sub-Class Only**

10
11 194. Plaintiff Wilcox incorporates all preceding paragraphs of this
12 complaint as if set forth fully herein.
13

14 195. This count does not raise any claims of common law fraud.
15

16 196. Rather, this count raises claims exclusively under the Pennsylvania
17 Uniform Trade Practices and Consumer Protection Law (“UTPCPL”).
18

19 197. **“The purpose of the UTPCPL is to protect the public from fraud**
20 **and unfair or deceptive business practices.”** Keller v. Volkswagen of Am.,
21 Inc., 733 A.2d 642, 646 (Pa.Super.1999).
22

23
24 198. It is well-established that, in order to carry out that purpose, the
25 UTPCPL must be liberally construed. See Chiles v. Ameriquet Mortg. Co., 551
26 F.Supp.2d 393, 398 (E.D.Pa.2008) (“**The UTPCPL must be construed**
27 **liberally.**”); Pirozzi v. Penske Olds-Cadillac-GMC, Inc., 413 Pa.Super. 308, 605
28

1 A.2d 373, 376, appeal denied, 532 Pa. 665, 616 A.2d 985 (1992) (“**our supreme**
2 **court held that the UTPCPL is to be liberally construed in order to effect its**
3 **purpose.”)**)

4
5
6 199. The conduct alleged herein took place during “trade and commerce”
7 within the meaning of the UTPCPL.

8
9 200. The conduct alleged herein constitutes a deceptive practice.

10
11 201. The UTPCPL 73 P.S. § 201-2(4)(xxi) defines unfair or deceptive
12 acts or practices, inter alia, as any: “**deceptive conduct which creates a**
13 **likelihood of confusion or misunderstanding.”**

14
15 202. Prior to 1996, 73 P.S. § 201-2(4)(xxi) required that a defendant
16 engage in the equivalent of common law fraud. See Flores v. Shapiro &
17 Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002); Commonwealth of Pa. v.
18 Percudani, 825 A.2d 743, 746-47 (Pa.Comm.w.2003).

19
20
21 203. In 1996, however, UTPCPL 73 P.S. § 201-2(4)(xxi) was amended to
22 add the word “deceptive” as an alternative to “fraud” in describing the practices
23 prohibited by this section. See Bennett v. A.T. Masterpiece Homes at
24 Broadsprings, LLC, 40 A.3d 145 (Pa.Super.2012) (holding that the amendment to
25 the catch-all provision that added the language “or deceptive conduct” changed
26 the requirement from proving actual fraud to merely proving deceptive conduct);
27
28

1 Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Comm.w.2003) (a
2 plaintiff who alleges deceptive conduct to proceed without proving all of the
3 elements of common law fraud); Flores v. Shapiro & Kreisman, 246 F.Supp.2d
4 427, 432 (E.D.Pa.2002):

5
6
7 **“by adding a prohibition on ‘deceptive’ conduct, the 1996**
8 **amendment to the CPL eliminated the need to plead all of the**
9 **elements of common law fraud in actions under the CPL. Under**
10 **general principles of statutory interpretation, no word should be**
11 **rendered redundant. The new word “deceptive” in the statute,**
12 **therefore, must have been intended to cover conduct other than**
13 **fraud.”**

14 204. As alleged herein, Defendants have engaged in deceptive conduct
15 which creates a likelihood of confusion or misunderstanding.

16 205. Such conduct is based on both affirmative misrepresentations,
17 material nondisclosures and material omissions.

18
19 206. In the case at bar, Defendants’ actions in stating on the label that the
20 Product contained **“PORK”** as an ingredient and that the name of the product
21 was **“Great Value Pork & Beans in Tomato Sauce”** constituted **“deceptive**
22 **conduct which creates a likelihood of confusion or misunderstanding”** within
23 the meaning of 73 P.S. § 201-2(4)(xxi).
24
25
26
27
28

1 207. Defendants also engaged in a knowing omission of material fact by
2 failing to inform consumers in any fashion that the Product actually contained no
3 pork.
4

5 208. These affirmative representations and omissions constitute a
6 deceptive practice.
7
8

9 209. By the acts alleged herein, Defendants have made a
10 misrepresentation of a material fact and a material nondisclosure, as described
11 herein.
12

13 210. Defendants acted with knowledge that their conduct was deceptive
14 and with intent that such conduct deceived consumers.
15
16

17 211. While it is not clear that actual reliance is required, Plaintiff Wilcox
18 and the members of the Pennsylvania Sub-Class did justifiably rely upon the
19 misrepresentation and material nondisclosure; a reliance which may be presumed
20 in this case where Defendants have engaged in a common course of identical
21 conduct.
22
23

24 212. Indeed, it impossible to conclude there was no reliance in this case
25 since the false affirmative statement of fact alleged herein is contained in the
26 name of the product itself, which includes the words "Pork & Beans" in the
27 Product name. It is a logical certainty that anyone wishing to purchase pork and
28

1 beans would, of necessity, have to look at the product label to see the name of
2 the product and therefore saw that it was called pork and beans.
3

4 213. In addition, Defendants' conduct violated 73 P.S. § 201-2(4) (vii) by
5
6 **“representing that goods... are of a particular standard, quality or grade...
7 if they are of another.”**
8

9 214. As a proximate result of this conduct, Plaintiff Wilcox and the
10 members of the Pennsylvania Sub-Class have suffered an ascertainable loss of
11 money.
12

13
14 **COUNT XV**

15 **PENNSYLVANIA COMMON LAW BREACH OF EXPRESS WARRANTY**

16
17 **On Behalf of the Pennsylvania Sub-Class Only**

18 215. Plaintiff Wilcox incorporates all preceding paragraphs of this
19 complaint as if set forth fully herein.
20

21 216. By operation of Pennsylvania law, Defendants entered into a contract
22 with each Pennsylvania Sub-Class member when the member purchased a
23 container of **“Great Value Pork & Beans in Tomato Sauce”** in Pennsylvania.
24

25
26 217. By operation of Pennsylvania law, the terms of this contract included
27 an express warranty incorporating the identical affirmation, promise and
28 description by Defendants regarding **“Great Value Pork & Beans in Tomato**

1 **Sauce,”** made in writing on the Product label, which stated that the good
2 contained **“PORK.”**
3

4 218. The relevant terms and language of the express warranty between
5 Defendants and each member of the Pennsylvania Sub-Class are identical.
6

7 219. Defendants have breached the terms of this express warranty in an
8 identical manner for each Pennsylvania Sub-Class member because **“Great**
9 **Value Pork & Beans in Tomato Sauce”** did not and could not conform to the
10 affirmation, promise and description on this label because, in fact, the Product
11 actually contained no pork whatsoever.
12
13

14 220. As a direct and proximate result of this breach of express warranty
15 by Defendants, each member of the Pennsylvania Sub-Class, including Plaintiff
16 Wilcox, has suffered economic loss.
17
18

19
20 **COUNT XVI**

21 **PENNSYLVANIA COMMON LAW BREACH OF IMPLIED CONTRACT/**
22 **VIOLATION OF COVENANT OF GOOD FAITH AND FAIR DEALING**

23 **On Behalf of the Pennsylvania Sub-Class Only**
24

25 221. Plaintiff Wilcox incorporates all preceding paragraphs of this
26 complaint as if set forth fully herein.
27
28

223. By operation of Pennsylvania law, there existed an implied duty of good faith and fair dealing in each such contract.

225. As a result of that breach, Plaintiff Wilcox and each member of the Pennsylvania Sub-Class suffered damages.

VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

226. Plaintiff Lamster incorporates all preceding paragraphs of this complaint as if set forth fully herein.

1 Product contains pork constitutes an unconscionable commercial practice,
2 deception, and misrepresentation and thus constitutes multiple, separate
3 violations of the GBL §349.
4

5
6 228. Defendants' marketing, advertising, promoting and selling of "**Great**
7 **Value Pork & Beans in Tomato Sauce**" is a consumer-oriented practice, as the
8 Product is advertised, promoted, marketed and sold to consumers throughout the
9 state of New York.
10

11
12 229. In the marketing, advertising, promotion and sale of its "**Great**
13 **Value Pork & Beans in Tomato Sauce**" to consumers, including Lamster and
14 the New York Subclass members, Defendants made the material
15 misrepresentations and omissions throughout the State of New York, in that
16 Defendants marketed, promoted and advertised the "**Great Value Pork &**
17 **Beans in Tomato Sauce**" as having characteristics and attributes which it did
18 not actually possess.
19
20
21

22 230. Defendants' unlawful conduct is material in that it has the capacity
23 to mislead or deceive consumers, including Lamster and the New York Subclass
24 members.
25

26
27 231. Defendants' unconscionable commercial practices, false promises,
28 misrepresentations and omissions are material in that they relate to matters to

1 which reasonable persons, including Lamster and the New York Subclass
2 members, would attach importance in their decisions or conduct relating to their
3 purchase of **“Great Value Pork & Beans in Tomato Sauce.”**
4

5
6 232. Defendants’ misrepresentations affected the cost of the **“Great**
7 **Value Pork & Beans in Tomato Sauce”** product.
8

9 233. Defendants charged Lamster and the New York Subclass more
10 money for this particular bean product as the **“Great Value Pork & Beans in**
11 **Tomato Sauce”** purported to include pork, which is an ingredient not found in
12 its less expensive bean products.
13
14

15 234. Defendants’ deception caused an inflated price for this particular
16 product resulting in injury to Lamster and the New York Subclass.
17

18 235. Said inflated price and the premium paid caused Lamster and the
19 New York Subclass to suffer actual harm and an injury recognized under the
20 N.Y. Gen. Bus. Law.
21

22 236. By reason of the foregoing, Defendants have violated N.Y. Gen.
23 Bus. Law § 349, and should be enjoined from representing that their Products
24 contain pork. Defendants are also liable to Lamster and the other members of
25 the New York Subclass for the damages that they have suffered as a result of
26
27
28

1 Defendants' actions, to be determined at trial, such damages to be trebled, plus
2 attorneys' fees.
3

4 **COUNT XVIII**

5 **VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 350**

6 **On Behalf of the New York Sub-Class Only**

7
8 237. Plaintiff Lamster incorporates all preceding paragraphs of this
9 complaint as if set forth fully herein.
10
11

12 238. By the acts alleged herein, Defendants engaged in the false
13 advertising of their **“Great Value Pork & Beans in Tomato Sauce”** in
14 violation of the GBL § 350.
15

16 239. As alleged with greater particularity herein, Defendants marketed,
17 promoted and advertised the **“Great Value Pork & Beans in Tomato Sauce”**
18 as having characteristics and attributes which it did not actually possess.
19
20

21 240. Defendants' unconscionable commercial practices, false promises,
22 misrepresentations and omissions set forth in this Complaint are material in that
23 they have the capacity to mislead or deceive consumers, including Lamster and
24 the New York Sub-Class members.
25
26

27 241. Defendants' unconscionable commercial practices, false promises,
28 misrepresentations and omissions set forth in this Complaint are material in that

1 they relate to matters to which reasonable persons, including Lamster and the
2 New York Sub-Class members, would attach importance in their decisions or
3 conduct relating to the purchase of **“Great Value Pork & Beans in Tomato**
4 **Sauce.”**
5

6
7 242. Defendants’ misrepresentations affected the cost of their product.
8

9 243. Defendants charged Lamster and the New York Sub-Class more
10 money for these particular bean products, as the **“Great Value Pork & Beans in**
11 **Tomato Sauce”** purported to include pork, which is not found in their less
12 expensive bean products.
13

14
15 244. Defendants’ deception caused an inflated price resulting in injury to
16 Lamster and the New York Sub-Class.
17

18 245. Said inflated price and the premium paid caused Lamster and the
19 New York Sub-Class to suffer actual harm and injury recognized under the N.Y.
20 Gen. Bus. Law.
21

22
23 246. By reason of the foregoing, Defendants have violated N.Y. Gen.
24 Bus. Law § 350, and should be enjoined from representing that their Product
25 contains pork. Defendants are also liable to Plaintiff Lamster and the other
26 members of the New York Sub-Class for the damages that they have suffered as
27
28

1 a result of Defendants' actions, such damages to be determined at trial, such
2 damages to be trebled, plus attorneys' fees.
3

4 **COUNT XIX**

5 **NEW YORK COMMON LAW BREACH OF EXPRESS WARRANTY**

6 **On Behalf of the of the New York Sub-Class**

7
8 247. Plaintiff Lamster incorporates all preceding paragraphs of this
9 complaint as if set forth fully herein.
10

11
12 248. Defendants expressly warranted in their marketing, advertising and
13 promotion of **"Great Value Pork & Beans in Tomato Sauce"** that the product
14 contained **"pork."**
15

16
17 249. Defendants' above representations constitute affirmations of facts or
18 promises to Plaintiff Lamster and the members of the New York Sub-Class that
19 relate to the **"Great Value Pork & Beans in Tomato Sauce"** and became part
20 of the basis of their bargain in purchasing the same.
21

22
23 250. Such affirmation of fact creates an express warranty under New
24 York law that **"Great Value Pork & Beans in Tomato Sauce"** will conform to
25 the express description and possess the characteristics as set forth in Defendants'
26 marketing, promotional and advertising materials.
27
28

1 251. Defendants breached their express warranties because **“Great Value**
2 **Pork & Beans in Tomato Sauce”** does not conform to Defendants’ promises,
3 descriptions or affirmations of fact made by Defendants in their marketing,
4 advertising and promotion. Defendants’ **“Great Value Pork & Beans in**
5 **Tomato Sauce”** product therefore was not adequately packaged, labeled, sold,
6 promoted or fit for the ordinary purposes for which it was used.
7
8

9
10 252. Plaintiff Lamster and the New York Sub-Class members purchased
11 Defendants’ **“Great Value Pork & Beans in Tomato Sauce”** products based
12 upon and in reliance on this false warranty.
13

14
15 253. As a direct and proximate result of Defendants’ breach of express
16 warranty, Defendants are liable to Plaintiff Lamster and the New York Sub-Class
17 members for the damages incurred as a result of Defendants’ actions, including,
18 but not limited to, the purchase price of Defendants’ **“Great Value Pork &**
19 **Beans in Tomato Sauce”** products, the amount of such damages to be
20 determined at trial.
21
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COUNT XX

**ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS
PRACTICES ACT
815 ILCS 505/1, et seq.**

On Behalf of the Illinois Sub-Class Only

254. Plaintiff Mullins incorporates all preceding paragraphs of this complaint as if set forth fully herein.

255. Plaintiff Mullins brings this claim individually and on behalf of the Illinois Sub-Class.

256. As alleged herein, Plaintiff Mullins has suffered injury in fact and lost money or property as a result of Defendants' conduct because she purchased the Product which Defendants falsely claimed contained both pork and beans, but received a product containing no pork.

257. At all times relevant hereto, the sale of the Product in Illinois was governed by the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 et seq.

258. The ICFA is a regulatory and remedial statute intended to protect consumers, including Plaintiff Mullins and the Illinois Sub-Class, against unfair or deceptive acts or practices.

1 259. Specifically, Section 2 of the ICFA prohibits deceptive acts or
2 practices, which are committed in the course of trade or commerce and with the
3 intent that others rely upon them. See 815 ILCS 505/2, which states:

4
5
6 **“Unfair methods of competition and unfair or deceptive acts or**
7 **practices, including but not limited to the use or employment of any**
8 **deception, fraud, false pretense, false promise, misrepresentation or**
9 **the concealment, suppression or omission of any material fact, with**
10 **intent that others rely upon the concealment, suppression or**
11 **omission of such material fact, or the use or employment of any**
12 **practice described in Section 2 of the “Uniform Deceptive Trade**
13 **Practices Act”, approved August 5, 1965, in the conduct of any trade**
14 **or commerce are hereby declared unlawful whether any person has**
15 **in fact been misled, deceived or damaged thereby.”**

16
17 260. In addition, 815 ILCS 510/2(a)(5) of the Uniform Deceptive Trade
18 Practices Act states:

19
20 **“A person engages in a deceptive trade practice when, in the course**
21 **of his or her business, vocation, or occupation, the person ...**
22 **represents that goods or services have ... characteristics, ... uses,**
23 **[or] benefits ... that they do not have”**

24
25 261. Plaintiff Mullins and the Illinois Sub-Class reserve the right to allege
26 other violations of law, which constitute other unlawful business acts or
27 practices. Such conduct is ongoing and continues to this date.

28 262. The above-described unfair or deceptive acts or practices occurred in
the course of conduct involving trade or commerce, namely, the sale of goods to
Plaintiff Mullins and the Illinois Sub-Class.

1 263. Defendants’ practice of knowingly and unlawfully engaging in the
2 activity described above also constitutes “unfair” business acts or practices
3 because, inter alia, Defendants engaged in false advertising, which misrepresents
4 and omits material facts regarding the Product.
5

6
7 264. Defendants’ business acts or practices therefore offend an
8 established public policy, and Defendants engage in immoral, unethical,
9 oppressive, and unscrupulous activities that are substantially injurious to
10 consumers, as alleged in detail previously, and therefore Defendants’ actions are
11 unfair or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815
12 ILCS 505/2.
13
14

15
16 265. Defendants intended that Plaintiff Mullins and the Illinois Sub-Class
17 rely on the deceptive acts or practices described herein. Defendants’ intent is
18 evidenced by, inter alia, that Defendants included the words “Pork & Beans” in
19 the name of the Product itself, even though Defendants were aware that the
20 Product did not, in fact, contain any pork.
21
22

23 266. As a matter of necessity, any consumer wishing to purchase a pork
24 and beans product would have to look at, and rely upon, the name of the Product,
25 as stated on the label.
26
27
28

1 267. Defendants' material misrepresentations and omissions described
2 above have caused harm to Plaintiff Mullins and other members of the Illinois
3 Sub-Class.
4

5
6 268. Plaintiff Mullins and the other members of the Illinois Sub-Class
7 have suffered injury in fact and lost money as a result of these unlawful, unfair,
8 and fraudulent practices.
9

10 **COUNT XXI**

11
12 **ILLINOIS COMMON LAW REGARDING BREACH OF EXPRESS**
13 **WARRANTY**

14
15 **On Behalf of the Illinois Sub-Class Only**

16 269. Plaintiff Mullins incorporates all preceding paragraphs of this
17 complaint as if set forth fully herein.
18

19 270. By operation of Illinois law, Defendants entered into a contract with
20 each member of the Illinois Sub-Class when the member purchased a container
21 of the Product at Walmart located in Illinois.
22

23
24 271. By operation of Illinois law, the terms of this contract included an
25 express warranty incorporating the identical affirmation, promise and description
26 by Defendants regarding the Product, made in writing on the label, that the
27
28

1 Product contained “**PORK**” as an ingredient and that the name of the product
2 was “**Great Value Pork & Beans in Tomato Sauce.**”
3

4 272. The relevant terms and language of the express warranty between
5 Defendants and each member of the Illinois Sub-Class are identical.
6

7 273. Defendants have breached the terms of this express warranty in an
8 identical manner for each member of the Illinois Sub-Class because the Product
9 actually contained no pork whatsoever and therefore did not, and could not,
10 conform to the affirmation, promise, and description on the label of the Product.
11

12 274. Plaintiff Mullin’s claim complies with 810 ILCS 5/2-607(3)(a).
13

14 275. Specifically, on November 9, 2015, Plaintiff Mullins served a
15 written “Notice of Breach of Warranties/Defects re: Great Value Pork and Beans
16 in Tomato Sauce” upon Defendants, on behalf of Mullins and the Illinois Sub-
17 Class, providing direct written notice of the defect and asking for remedial
18 measures. Defendants have not ceased the challenged conduct, nor have they
19 responded to that Notice.
20

21 276. Moreover, such written notice by Plaintiff Mullins was not necessary
22 as Defendants knew or should have known of the problem with Plaintiff Mullins’
23 purchases (i.e. lack of any pork in the product) as this defect by its very nature
24 necessarily affected all cans of the Product sold by Defendants including the
25
26
27
28

1 specific cans purchased by the Plaintiff Mullins and the Illinois Sub-Class, prior
2 to filing this complaint.
3

4 277. As a direct and proximate result of this breach of express warranty
5 by Defendants, each member of the Illinois Sub-Class has suffered economic
6 loss.
7

8
9 **COUNT XXII**

10 **ILLINOIS BREACH OF IMPLIED CONTRACT/VIOLATION**
11 **OF COVENANT OF GOOD FAITH AND FAIR DEALING**

12 **On Behalf of the Illinois Sub-Class Only**
13

14 278. Plaintiff Mullins incorporates all preceding paragraphs of this
15 complaint as if set forth fully herein.
16

17 279. Alternatively, if the Court concludes there was no actual express
18 warranty or contract between Defendants and the members of the Illinois Sub-
19 Class, then, by operation of Illinois law, there existed an implied contract for the
20 sale of goods between the Defendants and Plaintiff Mullins and each member of
21 the Illinois Sub-Class who purchased the Product at a Walmart store located in
22 Illinois.
23
24

25
26 280. By operation of Illinois law, there existed an implied duty of good
27 faith and fair dealing in each such contract.
28

1 281. By the acts alleged herein, Defendants have failed to abide by the
2 terms of the implied contract and violated that duty of good faith and fair dealing,
3 thereby breaching the implied contract between Defendants and each member of
4 the Illinois Sub-Class.
5

6
7 282. Plaintiff Mullin's claim complies with 810 ILCS 5/2-607(3)(a).
8

9 283. Specifically, on November 9, 2015, Plaintiff Mullins served a
10 written "Notice of Breach of Warranties/Defects re: Great Value Pork and Beans
11 in Tomato Sauce" upon Defendants, on behalf of Mullins and the Illinois Sub-
12 Class, providing direct written notice of the defect and asking for remedial
13 measures. Defendants have not ceased the challenged conduct, nor have they
14 responded to that Notice.
15
16

17
18 284. Moreover, such written notice by Plaintiff Mullins was not necessary
19 as Defendants knew or should have known of the problem with Plaintiff Mullins'
20 purchases (i.e. lack of any pork in the product) as this defect by its very nature
21 necessarily affected all cans of the Product sold by the Defendants, including the
22 specific cans purchased by Plaintiff Mullins and the Illinois Sub-Class, prior to
23 filing this complaint.
24
25

26
27 285. As a result of that breach, Plaintiff Mullins and each member of the
28 Illinois Sub-Class suffered damages.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs ask this court to:

- 3
- 4 a. Certify the proposed Nationwide Class and each State Sub-Class as class
- 5 actions pursuant to Fed.R.Civ.P. 23;
- 6 b. Enter an order for injunctive, equitable and declaratory relief as described
- 7 herein;
- 8 c. Enter judgment in favor of each class member for damages suffered as a result
- 9 of the conduct alleged herein, to include interest and pre-judgment interest;
- 10 d. Award plaintiffs reasonable attorneys' fees and costs;
- 11
- 12 e. Award plaintiffs and the class treble damages where appropriate; and
- 13 f. Grant such other and further legal and equitable relief as the court
- 14 deems just and equitable.

15 **JURY DEMAND**

16

17 Plaintiffs hereby demand a trial by jury as to all issues so triable.

18

19 By: s/Todd M. Friedman

20 Todd M. Friedman (SBN: 216752)

21 **LAW OFFICE OF TODD M. FRIEDMAN**

22 324 Beverly Dr., #725

23 Beverly Hills, CA 90212

24 Tel: (877) 206-4741

25 Fax: (866) 633-0228

26 tfriedman@attorneysforconsumers.com

27

28

1 Stephen P. DeNittis (*pro hac vice* pending)

2 **DeNITTIS OSEFCHEN, P.C.**

3 5 Greentree Centre

4 525 Route 73 North, Suite 410

5 Marlton, NJ 08053

6 Tel: 856-797-9951

7 Fax: 856-797-9978

8 sdenittis@denittislaw.com

9 Janine L. Pollack (*pro hac vice* pending)

10 **WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP**

11 270 Madison Avenue

12 New York, NY 10016

13 Ross H. Schmierer (*pro hac vice* pending)

14 **PARIS ACKERMAN & SCHMIERER, LLP**

15 103 Eisenhower Parkway

16 Roseland, NJ 07068

17 Richard J. Lantinberg (*pro hac vice* pending)

18 **THE WILNER FIRM**

19 444 E. Duval Street

20 Jacksonville, FL 32202

21 Dated: November 24, 2015

22 Counsel for Plaintiffs and the Class

Attachment A

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#137

HOW WAS YOUR EXPERIENCE?
 Tell us about your visit today and
 you could win 1 of 5 \$1000 Walmart
 gift cards or 1 of 750 \$100 Walmart
 gift cards. Diganos acerca de su
 visita a Walmart hoy y usted podria
 ganar una de las 5 tarjetas de regalo
 de Walmart de \$1000 o una de las 750
 tarjetas de regalo de Walmart de
 \$100.

<http://www.survey.walmart.com>

ID #: 7HX9KN1Z2MPD

No Purchase Necessary. Must be 18 or
 older and a legal resident of the 50
 US, DC, or PR to enter. To enter
 without purchase and for official
 rules, visit
www.entry.survey.walmart.com.
 Sweepstakes period ends on the date
 outlined in the official rules.
 Survey must be taken within ONE week
 of today. Void where prohibited.
 THANK YOU!

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 Save money. Live better.

(714) 869 - 0530
 MANAGER MELVIN ENRIQUEZ
 1000 E IMPERIAL HWY
 LA HABRA, CA 90631
 ST# 05641 DP# 000763 TES 16 TR# 03285
 NOYOLK NOODL 007173000715 F 1.98 0
 NOYOLK NOODL 007173000715 F 1.98 0
 NOYOLK NOODL 007173000715 F 1.98 0
 SPRAY GLUE 002600000422 5.97 X
 BV PORK BEAN 007874237084 F 0.66 0
 SUBTOTAL 12.67
 TAX 1 \$ 600 % 0.61
 TOTAL 13.08
 MCARD TEND 13.08

ACCOUNT # ***** 0022 S
 APPROVAL # 587025
 REF # 1042000314
 TERMINAL # 168296818

10/02/15 11:45:53

CHANGE DUE 0.00

ITEMS SOLD 5

TC# 3341 4792 2044 3716 5305



Low Prices You Can Trust. Every Day.
 10/02/15 11:45:54

CUSTOMER COPY



Attachment B

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Walmart 
Save money. Live better.

(856) 665 - 5430
MANAGER FAISAL KHAN
500 ROUTE 38
CHERRY HILL NJ 8002
ST# 05340 OF# 003171 TE# 17 TR# 06741
GV PORK BEAN 007874237084 F 0.72 0
GV PORK BEAN 007874237084 F 0.72 0
GV PORK BEAN 007874237084 F 0.72 0
FLOSS 003700003866 3.37 X
REPHRESH 036671583304 15.96 X
SUBTOTAL 21.49
VENDOR COUPON 1.00-0
SUBTOTAL 20.49
VENDOR COUPON 2.00-0
SUBTOTAL 18.49
TAX 1 7.000 % 1.36
TOTAL 19.85
DEBIT VEND 19.85
CHANGE DUE 0.00

EFT DEBIT PAY FROM PRIMARY
19.85 TOTAL PURCHASE
ACCOUNT # **** * 1583 S
REF # 524200651878
NETWORK ID. 0090 APPR CODE 271147
TERMINAL # SC011186

08/30/15 10:52:52

ITEMS SOLD 5

TC# 4221 4119 2546 3317 9320



Low Prices You Can Trust. Every Day.
08/30/15 10:52:54

Savings Catcher! Scan with Walmart app




Attachment C

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#141

www.entry.survey.walmart.com.

Sweepstakes period ends on the date
outlined in the official rules.
Survey must be taken within ONE week
of today. Void where prohibited.
THANK YOU!

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(215) 468 - 4220

MANAGER FRANK PELLICORI

1675 S CHRISTOPHER COLUMBUS BL

PHILADELPHIA PA 19148

ST# 02141	OP# 006910	TE# 04	TR# 08803
GV PORK BEAN	007874237084	F	0.66 0
GV PORK BEAN	007874237084	F	0.66 0
GV PORK BEAN	007874237084	F	0.66 0
ORANGES	000000004012	KI	0.78 N
AQUAFINA	001200000159	F	1.58 N
GUM	007339001404	F	2.96 N
SUBTOTAL			7.30
TOTAL			7.30
CASH TEND			8.00
CHANGE DUE			0.70

ITEMS SOLD 6

TC# 6598 7913 8397 2946 4817



Low Prices You Can Trust. Every Day.
10/06/15 10:05:11

Savings Catcher! Scan with Walmart app



Attachment D

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(845) 368 - 4705
MANAGER DAVID YEAGLEY
250 ROUTE 59
SUFFERN NY 10901
ST# 02906 OP# 004411 TE# 10 TR# 04950
INFLT PILLOW 075057600766 2.47 X
INFLT PILLOW 075057600766 2.47 X
INFLT PILLOW 075057600766 2.47 X
REM OIL 10Z 004770026617 2.37 X
** VOIDED ENTRY **
INFLT PILLOW 075057600766 2.47-X
LIP CARE 030573190037 2.94 N
BIC LIGHTER 007033064304 1.32 X
GV PORK BEAN 007874237084 F 0.72 0
GV PORK BEAN 007874237084 F 0.72 0
GV PORK BEAN 007874237084 F 0.72 0
SUBTOTAL 13.73
TAX 1 8.375 % 0.72
TOTAL 14.45
MCARD TEND 14.45

CHASE MASTERCARD * **** * 4774 I 1
APPROVAL # 08283P
REF # 1042000314

AID A0000000041010
TC 624D56E12732FE42
TERMINAL # SC010401
*NO SIGNATURE REQUIRED

10/10/15 11:49:47

CHANGE DUE 0.00

ITEMS SOLD 8

TC# 6778 2358 4722 2949 845



Low Prices You Can Trust. Every Day.
10/10/15 11:49:47

CUSTOMER COPY

Savings Catcher! Scan with Walmart app

